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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,897	01/08/2004	Glen S. Axelrod	TFH056	8169
32047	7590	01/19/2006	EXAMINER	
GROSSMAN, TUCKER, PERREAULT & PFLEGER, PLLC 55 SOUTH COMMERICAL STREET MANCHESTER, NH 03101			BECKER, DREW E	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 01/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/753,897

Applicant(s)

AXELROD ET AL.

Examiner

Drew E. Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 1-25, 34 and 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). -
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 1-25 and 34-35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 20, 2005.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 26-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 26 recites "mixing said mixture". It is not clear when the mixing is occurring.
5. Claim 26 recites the limitation "the composition". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 26-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scaglione et al [Pat. No. 4,868,002] in view of Karwowski et al [Pat. No. 5,731,029] and Roth [Pat. No. 4,239,785].

Scaglione et al teach a method of making jerky animal chews (column 5, line 36) by providing a base material of meat by-products (column 3, lines 34-52) and a binder (column 4, lines 36-68), the binder inherently being preheated to ambient temperature, combining the ingredients in a known mixer (column 6, line 43), passing the mixture through various conveyors, conduits, channels, extruders, or horns (column 6, lines 46-52), an absence of heating during conveying, the extruder providing a shear rate of as low as 20/sec (column 7, lines 56-67), freezing the loaves in a cooled chamber (column 11, line 39), cutting and slicing to shape (column 11, lines 40-53), an initial moisture content of 65-70% (column 10, line 12), a final moisture content of less than 35% (column 10, line 15), and binding the product upon being cooled (column 9, line 37).

Scaglione et al do not recite a screw conveyor (claim 26), cooling rollers (claim 26), and a cooling tunnel (claim 29). Roth teaches a method including the steps of providing a base material and binder (column 2, line 50; column 3, line 53), a screw conveyor maintained at less than 200°F (Figure 1, #10; column 4, line 4), cooled rollers (Figure 1, #18, 20, 26, 28, 34), cutting to shape (Figure 1, #32), the final moisture level being less than the initial moisture level (column 5, lines 46-60), the base material including soybean and meat materials (column 2, lines 49-52), and the binder inherently binding the mixture together. Karwowski et al teach a method of making jerky including an initial moisture content of 50% (column 2, line 20), a final moisture content of 20% or less

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(column 3, line 27), a screw conveyor for its extruder (Figure 2, #110), and a cooling tunnel (Figure 1, #145). It would have been obvious to one of ordinary skill in the art to incorporate the initial moisture level of Karwowski et al into the invention of Scaglione et al since both are directed to methods of making jerky, since Scaglione et al already included drying (column 5, lines 46-60) and provided a moisture level of 65-70% merely as an example (column 10, line 12), and since this initial moisture level was commonly known and used in jerky products as shown by Karwowski et al (column 2, line 20). It would have been obvious to one of ordinary skill in the art to incorporate the screw conveyor of Karwowski et al into the invention of Scaglione et al since both are directed to methods of making jerky, since Scaglione et al already included a conveyor feeding the loaf horn (column 6, lines 46-54), and since screw conveyors were commonly used for this purpose as shown by Karwowski et al (Figure 2, #110). It would have been obvious to one of ordinary skill in the art to incorporate the cooling tunnel of Karwowski et al into the invention of Scaglione et al since both are directed to methods of making jerky, since Scaglione et al already included a cooling chamber (column 11, lines 39), and since cooling tunnels were commonly used for cooling jerky as shown by Karwowski et al (Figure 1, #140). It would have been obvious to one of ordinary skill in the art to incorporate the cooling drums of Roth into the invention of Scaglione et al, in view of Karwowski et al, since all are directed to methods of making jerky, since Scaglione et al already included a freezing step (column 11, line 39), and since the cooling drums of Roth provided a continuous means for cooling the extruded product of Scaglione et al without the need to first separate it into loaves.

Response to Arguments

8. Applicant's arguments with respect to claims 26-33 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

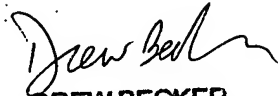
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


DREW BECKER
PRIMARY EXAMINER

1-17-06